

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAROL MELTON,)
)
Plaintiff,) Index No. 19 CV 09755 (VB)
)
-against-)
)
POUGHKEEPSIE CITY)
SCHOOL DISTRICT,)
)
Defendant.)
_____)

DEPOSITION OF
NICOLE CHERRY
CONDUCTED VIRTUALLY VIA ZOOM
TUESDAY, JUNE 29, 2021
9:31 A.M. EST

Reported By:
Cheryl A. Dixon, RPR, CRR
Job No: 196258

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<p style="text-align: right;">Page 6</p> <p>Nicole Cherry</p> <p>means?</p> <p>Q. Sure. So this is a deposition like what we're doing right now where you've been under oath and an attorney has been asking you questions. Have you ever done that before?</p> <p>A. Yes.</p> <p>Q. How many times?</p> <p>A. Once.</p> <p>Q. And what was the nature of that case where you previously were deposed?</p> <p>MR. RUSHFIELD: Objection to form. She's not saying she was previously deposed. She's saying she previously testified under oath.</p> <p>BY MR. CARMAN:</p> <p>Q. You can answer the question.</p> <p>A. I'm sorry, now I'm confused.</p> <p>Q. Sure. I'll rephrase. You had previously testified under oath; correct?</p> <p>A. Correct.</p> <p>Q. What was nature of that case where you previously gave testimony under oath?</p> <p>A. It had to do with the district. Am I allowed to say what?</p> <p>MR. RUSHFIELD: Yes, you can.</p>	<p style="text-align: right;">Page 7</p> <p>Nicole Cherry</p> <p>THE WITNESS: It was an -- I believe an arbitration.</p> <p>BY MR. CARMAN:</p> <p>Q. Okay. And what was the arbitration about?</p> <p>A. It had to do with unit matters involving administrators.</p> <p>Q. What do you mean when you say "unit matters"?</p> <p>A. Do you want me to specifically state what it was about?</p> <p>Q. Please.</p> <p>A. Whether they were 12-month or 10-month employees.</p> <p>Q. So is it fair to say it related to employment issues?</p> <p>A. Yes.</p> <p>Q. Okay. And how long ago was it that you testified in that proceeding?</p> <p>A. About one month.</p> <p>Q. To quickly go over some logistics here, please answer any questions that I ask completely and accurately. Understand?</p> <p>A. Yes.</p> <p>Q. If you do not hear or understand any of my</p>
<p style="text-align: right;">Page 8</p> <p>Nicole Cherry</p> <p>questions, please let me know. If you have a question -- I'm sorry. If you answer a question, I will assume that you have heard it and understood it and have answered it completely and accurately. Understand?</p> <p>A. Yes.</p> <p>Q. Okay. Let me finish my questions before you begin to answer so the court reporter can transcribe what is being said. Okay?</p> <p>A. Yes.</p> <p>Q. If the answer is "yes" or "no", please say "yes" or "no" so that the court reporter can transcribe your answer. They have difficulty with nonverbal gestures.</p> <p>Does that make sense?</p> <p>A. Yes.</p> <p>Q. Okay. Are you under the influence of any medications or drugs that would affect your ability to testify truthfully and completely today?</p> <p>A. No, I am not under the influence of any drugs.</p> <p>Q. Is there any reason at all that you would not be able to testify truthfully and completely today?</p> <p>A. No, there's no reason why I would not be able to testify truthfully and completely.</p>	<p style="text-align: right;">Page 9</p> <p>Nicole Cherry</p> <p>Q. What did you do to prepare for today's deposition?</p> <p>A. I'm sorry, can you repeat that? I missed the first part.</p> <p>Q. Sure. What did you do to prepare for today's deposition?</p> <p>A. What did I do to prepare?</p> <p>Q. Yes.</p> <p>A. Aside from speaking to Mr. Rushfield?</p> <p>Q. Okay. So you met with counsel, Mr. Rushfield; is that correct?</p> <p>A. Correct.</p> <p>Q. Okay. Did you meet just with Mr. Rushfield or was there anybody else present?</p> <p>A. No, just Mr. Rushfield.</p> <p>Q. How long would you say you met with Mr. Rushfield to prepare for today's deposition?</p> <p>A. I met with Mr. Rushfield for about an hour.</p> <p>Q. Okay. Did you review any documents in preparation for today's deposition?</p> <p>A. The only documents that I reviewed was the statement that I originally had given.</p> <p>Q. And when you say "statement that you had originally given," what do you mean?</p>

<p style="text-align: right;">Page 10</p> <p>1 Nicole Cherry</p> <p>2 A. When Dr. Wade asked me -- and forgive me</p> <p>3 because I'm trying to remember -- asked me about my</p> <p>4 involvement with the Empire Grant.</p> <p>5 Q. So Dr. Wade, about a year ago, asked you to</p> <p>6 give a statement related to Empire Grants; is that</p> <p>7 correct?</p> <p>8 A. It was a long time ago.</p> <p>9 Q. Okay. And when you say he asked you to give</p> <p>10 a statement, do you mean a sworn statement?</p>	<p style="text-align: right;">Page 11</p> <p>1 Nicole Cherry</p> <p>2 A. No, sir.</p> <p>3 Q. Okay. Could you please describe your formal</p> <p>4 education, beginning with high school?</p> <p>5 A. I went to Poughkeepsie High School, graduated</p> <p>6 in 1995. I received my associate's degree from Dutchess</p> <p>7 Community College in 2007. I received my bachelor's</p> <p>8 degree from New Paltz in 2013. I received my master's</p> <p>9 degree from Marist College in 2017. And I received my</p> <p>10 Certificate of Advanced Study from Niagara in 2020, I</p>
<p>11 A. No. No, in my -- okay. No, he did not ask</p> <p>12 me to give a sworn statement. In my current capacity,</p> <p>13 I'm over grants and he was trying to see if I was always</p> <p>14 over the grants.</p> <p>15 Q. When you say "over the grants" what do you</p> <p>16 mean by that?</p> <p>17 A. I oversee them in my current capacity, but I</p> <p>18 did not oversee them in regards to this.</p> <p>19 Q. Okay. Did you meet with anybody other than</p> <p>20 Mr. Rushfield to prepare for today's deposition?</p> <p>21 A. No, sir.</p> <p>22 Q. Have you ever been convicted of a felony?</p> <p>23 A. No, sir.</p> <p>24 Q. Have you ever been subject to any type of</p> <p>25 disciplinary proceeding?</p>	<p>11 believe.</p> <p>12 Q. Where are you currently employed?</p> <p>13 A. Poughkeepsie City School District.</p> <p>14 Q. And how long have you been employed at</p> <p>15 Poughkeepsie City School District?</p> <p>16 A. 2010.</p> <p>17 Q. So about 11 years; right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And what is your current role there?</p> <p>20 A. Interim executive director of community</p> <p>21 schools.</p> <p>22 Q. And what are your responsibilities as the --</p> <p>23 I'm sorry, could you say that again. I just want to</p> <p>24 write it down because it was sort of a long title.</p> <p>25 A. My current title is interim executive</p>
<p style="text-align: right;">Page 12</p> <p>1 Nicole Cherry</p> <p>2 director of community schools.</p> <p>3 Q. Okay. And how long have you been the interim</p> <p>4 executive director of community schools?</p> <p>5 A. August 2020.</p> <p>6 Q. And what are your responsibilities as the</p> <p>7 interim executive director of community schools?</p> <p>8 A. One of my responsibilities is to oversee</p> <p>9 extended learning time in after-school programs, it's to</p> <p>10 create programs within the district. It's to bring in</p> <p>11 community partners. It's to change our schools into</p> <p>12 community schools, which means it offers resources, both</p> <p>13 inside and outside of schools, for students and their</p> <p>14 families.</p> <p>15 I'm a member of the leadership team, so I</p> <p>16 create district goals, along with the superintendent. I</p> <p>17 work in concert with other executive directors to</p> <p>18 achieve district goals such as increased graduation</p> <p>19 rate, increased opportunities for students, early</p> <p>20 childhood education, social, emotional support.</p> <p>21 Q. And what was your role before you became the</p> <p>22 interim executive director of community schools?</p> <p>23 A. Director of family community engagement.</p> <p>24 Q. And how long did you hold that position?</p> <p>25 A. I held that position for five years and was</p>	<p style="text-align: right;">Page 13</p> <p>1 Nicole Cherry</p> <p>2 granted tenure in February 2020.</p> <p>3 Q. Could you say that again. I didn't quite</p> <p>4 hear that.</p> <p>5 A. I held -- I'm sorry, I just took a drink.</p> <p>6 Q. That's fine.</p> <p>7 A. I held the position of director</p> <p>8 of community -- director of family and community</p> <p>9 engagement for five years and was granted tenure in</p> <p>10 February 2020.</p> <p>11 Q. Okay. And what were your responsibilities in</p> <p>12 your role as director of family community engagement?</p> <p>13 A. My primary responsibility was to oversee the</p> <p>14 My Brother's Keeper Program, to increase family</p> <p>15 engagement district wide, to work on the Title 1, the</p> <p>16 Title 1 goals, school improvement efforts. My office</p> <p>17 was rotated throughout different school buildings who</p> <p>18 needed additional support. Also, the district's</p> <p>19 community liaison.</p> <p>20 Q. Before you became director of family</p> <p>21 community engagement, what role did you hold?</p> <p>22 A. I was the coordinator of family community</p> <p>23 engagement.</p> <p>24 Q. And how long did you hold that role?</p> <p>25 A. One year.</p>

<p style="text-align: right;">Page 14</p> <p>1 Nicole Cherry</p> <p>2 Q. What position did you hold in the district</p> <p>3 before the coordinator of family community engagement?</p> <p>4 A. Before the coordinator of family community</p> <p>5 engagement, I was the director of climate and culture at</p> <p>6 Poughkeepsie Middle School.</p> <p>7 Q. I'm going to put in front of you what has</p> <p>8 previously been marked as Plaintiff's Exhibit 2.</p> <p>9 (Exhibit 2 marked.)</p> <p>10 BY MR. CARMAN:</p>	<p style="text-align: right;">Page 15</p> <p>1 Nicole Cherry</p> <p>2 closed it trying to get back. Page 4?</p> <p>3 Q. Yes. Numbered paragraph 6.</p> <p>4 A. Okay.</p> <p>5 Q. All right. And so do you understand that you</p> <p>6 are here to testify on behalf of Poughkeepsie City</p> <p>7 School District on topic number 6 which is, "The persons</p> <p>8 involved in and procedures related to solicitation of</p> <p>9 applications, application process, and selection of</p> <p>10 recipients of Empire State Grants from 2017 to</p>
<p>11 Q. So I'm going to share this with you through</p> <p>12 the chat.</p> <p>13 A. Okay.</p> <p>14 Q. Let me know if you have any issue opening the</p> <p>15 file and I can screen share if we need to.</p> <p>16 A. May I take a moment to read?</p> <p>17 Q. Sure. Let me know when you're ready.</p> <p>18 A. Okay. (Reviewing document.)</p> <p>19 Okay.</p> <p>20 Q. Have you ever seen this document before?</p> <p>21 A. No, sir. I'm trying to get back to my screen</p> <p>22 here. Am I here? Okay. No, sir.</p> <p>23 Q. Okay. So I'd like to direct your attention</p> <p>24 to page 4, and specifically numbered paragraph 6.</p> <p>25 A. I'd have to open it back, I'm sorry. I</p>	<p>11 present"?</p> <p>12 A. Yes, sir, I understand.</p> <p>13 Q. Okay. You can likely close that now. We</p> <p>14 won't need to keep looking at that exhibit.</p> <p>15 Ms. Cherry, have you ever heard of</p> <p>16 something called an "Empire State Grant"?</p> <p>17 A. Yes, sir.</p> <p>18 Q. What is an Empire State Grant?</p> <p>19 A. So an Empire State Grant was a grant awarded</p> <p>20 by the office of OCFS. We received Empire funding for</p> <p>21 round one and round three. It's to provide enrichment</p> <p>22 opportunities after the school day for students.</p> <p>23 Q. I believe you referred to something as "OCFS"</p> <p>24 [sic], what does that mean?</p> <p>25 A. I'm sorry -- I apologize. Office of</p>
<p style="text-align: right;">Page 16</p> <p>1 Nicole Cherry</p> <p>2 Children's and Family Services.</p> <p>3 Q. And is that an office within Poughkeepsie</p> <p>4 City School District?</p> <p>5 A. No, sir, that's a state office.</p> <p>6 Q. And so a state office called the Office of</p> <p>7 Children and Family Services allocates funds to the</p> <p>8 Poughkeepsie City School District to then distribute as</p> <p>9 Empire State Grants; is that correct?</p> <p>10 MR. RUSHFIELD: Objection to form.</p> <p>11 You can answer.</p> <p>12 THE WITNESS: Yes, sir.</p> <p>13 I lost the question now --</p> <p>14 MR. RUSHFIELD: Let me just let the</p> <p>15 witness know. I can -- the only objection I can make</p> <p>16 during this proceeding normally is an objection to the</p> <p>17 form of a question. You can nonetheless be required to</p> <p>18 answer the question if you understand it. The objection</p> <p>19 is really reserved for a potential trial. So the fact</p> <p>20 that I -- I'd ask you to have a pregnant pause between</p> <p>21 the question and the answer in case I may have an</p> <p>22 objection so the reporter can get it, but you can</p> <p>23 nonetheless answer the question if you feel you</p> <p>24 understand.</p> <p>25 Thank you, Counsel.</p>	<p style="text-align: right;">Page 17</p> <p>1 Nicole Cherry</p> <p>2 THE WITNESS: Can you please restate the</p> <p>3 question, I lost it now?</p> <p>4 MR. CARMAN: Could the court reporter</p> <p>5 read the last question back, please?</p> <p>6 (Record read.)</p> <p>7 MR. RUSHFIELD: You have my objection to</p> <p>8 the form of the question. If you understand it, you can</p> <p>9 answer it, Ms. Cherry.</p> <p>10 THE WITNESS: I'm confused when you say</p> <p>11 "allocate funds to the district." Can you --</p> <p>12 BY MR. CARMAN:</p> <p>13 Q. Sure. Who awards Empire State Grants?</p> <p>14 A. This is a complicated question. I'm going to</p> <p>15 answer the best way I can. The District applied for an</p> <p>16 Empire State Grant. Once they applied to the Empire</p> <p>17 State Grant, they were required -- I'm getting confused</p> <p>18 here.</p> <p>19 OCFS awards Empire State Grants. The</p> <p>20 money is disbursed to the community-based partners</p> <p>21 through the school district that provide the services.</p> <p>22 I don't know if that makes sense, but I'm trying to</p> <p>23 answer the best I can.</p> <p>24 Q. That's all I could ask of you. I'll try and</p> <p>25 ask some clarifying questions, then we'll see if we can</p>

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1 Nicole Cherry
 2 get it in order here. So a -- strike that.
 3 The Poughkeepsie City School District
 4 applies to OCSF for an Empire State Grant; correct?
 5 A. Correct.
 6 Q. And that money ultimately will be distributed
 7 to I believe you referred to them as "community
 8 partners"; is that right?
 9 A. I believe I said community-based
 10 organizations, CBOs; if I didn't say that, that's what I
 11 meant to say.
 12 Q. So if I refer to community-based
 13 organizations or CBOs, you will understand what I'm
 14 referring to; correct?
 15 A. Yes, sir.
 16 Q. So the funding -- strike that.
 17 Poughkeepsie City School District
 18 receives an Empire State Grant from OCSF; correct?
 19 A. Yes.
 20 Q. And then Poughkeepsie City School District
 21 distributes those funds to community-based
 22 organizations; right?
 23 A. Yes.
 24 Q. Do the community-based organizations apply to
 25 Poughkeepsie City School District to receive those

Page 20

1 Nicole Cherry
 2 Q. So you are only familiar with the process for
 3 going back to when?
 4 A. About 2019.
 5 Q. So is it fair to say that you're unfamiliar
 6 with how Empire State Grants were distributed prior to
 7 2019?
 8 A. Yes, sir.
 9 Q. Okay. You talked to anybody at Poughkeepsie
 10 City School District to learn about how Empire State
 11 Grants were disbursed prior to 2019?
 12 A. I've started going through the grants and
 13 learning about them because, like I said, this is new to
 14 my purview and it's not exclusive to the Empire Grant,
 15 so I have about 20 books of grants that I'm learning.
 16 Q. All right. Let's talk about how Empire State
 17 Grants are disbursed by the District from 2019 to today,
 18 because you said that's what you're familiar with;
 19 correct?
 20 A. Right.
 21 Q. Okay. So when a community-based organization
 22 wishes to receive funding through the Empire State Grant
 23 program they submit an RFP to the Poughkeepsie City
 24 School District; right?
 25 A. Yes.

1 Nicole Cherry
 2 funds?
 3 A. They -- the community-based organizations
 4 apply through an RFP to the school district.
 5 Q. And what is an "RFP"?
 6 A. Request for proposals.
 7 Q. And a community-based organization that
 8 wishes to receive a portion of the Empire State Grant
 9 submits a request for proposal to Poughkeepsie City
 10 School District; right?
 11 A. Yes.
 12 Q. Who within Poughkeepsie City School District
 13 decides who will receive a portion of the Empire State
 14 Grant?
 15 A. I need a clarifying question because I was
 16 not involved with the initial round of Empire Grants.
 17 Q. And when you say "initial round," what do you
 18 mean when you say "initial round"?
 19 A. What we're referring to now, this case, I was
 20 not a part of that process. I can only speak to the
 21 process now.
 22 Q. How long has the current process been in
 23 place?
 24 A. I can only speak to as far as I know, and
 25 I've been involved for about two years now.

Page 21

1 Nicole Cherry
 2 Q. And what does an RFP consist of?
 3 A. So each RFP consist of the grant parameters,
 4 the areas of service. Each is unique to the grant, but
 5 it highlights all the sort of attributes you need to
 6 have in your proposal.
 7 Q. When you say that each proposal is unique to
 8 the grant, are you referring to just Empire State Grants
 9 or are you saying that the Empire State Grants and other
 10 grants that RFPs are submitted for?
 11 A. Well, in regards to Empire State Grants, for
 12 example, we've just been awarded an Empire Three Grant.
 13 There's different areas in the grant like violence
 14 prevention, you may want to apply for that, or you may
 15 want to apply for health and wellness, for example.
 16 That's what I was referring to. But in regards to all
 17 grants, sometimes the RFPs could look different,
 18 depending on what entity they're coming from. Most of
 19 the grants don't come from OCSF. OCSF is a little more
 20 stringent with their criteria than, say, the state
 21 education department.
 22 Q. You referred to "round one" and "round three"
 23 Empire State Grants. Do you recall that?
 24 A. Yes, sir.
 25 Q. What is a "round one" Empire State Grant?

<p style="text-align: right;">Page 22</p> <p>1 Nicole Cherry</p> <p>2 A. That's the one I was not involved with, but I</p> <p>3 believe that's the first round that ever came out.</p> <p>4 Q. Okay. And when you say "round" you mean</p> <p>5 iteration of funding from OCSF [sic]?</p> <p>6 A. Iteration of funding?</p> <p>7 Q. Yes. For example, "round one" means the</p> <p>8 first round of funding in time; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And so round two funding would occur after</p> <p>11 round one funding; right?</p> <p>12 A. Yes.</p> <p>13 MR. RUSHFIELD: Counsel, before you ask</p> <p>14 your next question, you keep referring to "OCSF", I</p> <p>15 believe it's "OCFS".</p> <p>16 MR. CARMAN: You're correct. Thank you.</p> <p>17 BY MR. CARMAN:</p> <p>18 Q. Did Poughkeepsie City School District receive</p> <p>19 a round two allocation from OCFS?</p> <p>20 A. I don't know if they applied for round two.</p> <p>21 Q. Okay. Did Poughkeepsie City School District</p> <p>22 receive round three funding from OCFS?</p> <p>23 A. The Poughkeepsie City School District was</p> <p>24 awarded round three funding that's set to start next</p> <p>25 school year due to COVID. It didn't start this school</p>	<p style="text-align: right;">Page 23</p> <p>1 Nicole Cherry</p> <p>2 year.</p> <p>3 Q. Okay.</p> <p>4 A. So the answer is no, we didn't receive the</p> <p>5 funding yet.</p> <p>6 Q. You have been awarded the funding?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Is there a committee that determines</p> <p>9 which community-based organizations will receive a</p> <p>10 portion of the Empire State Grant?</p> <p>11 MR. RUSHFIELD: Objection to form.</p> <p>12 You can attempt to answer.</p> <p>13 THE WITNESS: There's not a committee</p> <p>14 that determines which organization. The RFP process is</p> <p>15 a blind process. The review process is a blind process.</p> <p>16 BY MR. CARMAN:</p> <p>17 Q. What do you mean when you say it's a "blind</p> <p>18 process"?</p> <p>19 A. The audit committee, the names are redacted</p> <p>20 from the proposals and then they are scored based on a</p> <p>21 rubric.</p> <p>22 Q. Who scores them?</p> <p>23 A. A committee. It's usual a committee</p> <p>24 assembled of different people, administrators. It could</p> <p>25 have a teacher on it, it could have a community member;</p>
<p style="text-align: right;">Page 24</p> <p>1 Nicole Cherry</p> <p>2 but the committees are usually composed of different</p> <p>3 people.</p> <p>4 Q. How many people sit on this committee?</p> <p>5 A. I mean it could be anywhere from -- I believe</p> <p>6 the average is five. It can be three to five.</p> <p>7 Q. You said that certain information is redacted</p> <p>8 from the RFPs before it is submitted to the committee</p> <p>9 for scoring; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. What information is redacted?</p> <p>12 A. The name of the organization.</p> <p>13 Q. Anything else?</p> <p>14 A. Any identifying information.</p> <p>15 Q. Okay. A public -- strike that.</p> <p>16 Are the requests for proposals published</p> <p>17 somewhere?</p> <p>18 A. Can you clarify that question?</p> <p>19 Q. Sure. How does Poughkeepsie City School</p> <p>20 District solicit proposals for Empire State Grants?</p> <p>21 A. They have to put an RFP out on the website,</p> <p>22 on the District website.</p> <p>23 Q. Is the website the only place where that's</p> <p>24 published?</p> <p>25 A. When the RFPs go out, I also believe an</p>	<p style="text-align: right;">Page 25</p> <p>1 Nicole Cherry</p> <p>2 email -- a mass email goes out to all community-based</p> <p>3 organizations. But yes, it is made public.</p> <p>4 Q. Is funding through Empire State Grants, is</p> <p>5 that done on an annual basis?</p> <p>6 A. I can't answer that because, as I stated, we</p> <p>7 haven't received funding yet for round three.</p> <p>8 Q. And do you know in the past whether it was</p> <p>9 done on an annual basis?</p> <p>10 A. I can't answer that.</p> <p>11 Q. Because you don't know?</p> <p>12 A. Because I'm not fully sure.</p> <p>13 Q. So you're not sure, sitting here today,</p> <p>14 whether funding for Empire State Grants in the past was</p> <p>15 done on an annual basis; is that right?</p> <p>16 A. I'm not sure if OCFS sent money quarterly or</p> <p>17 annually, I'm not sure.</p> <p>18 Q. Do you know how the District solicited RFPs</p> <p>19 in the past, whether that was done on an annual basis or</p> <p>20 quarterly, for example?</p> <p>21 MR. RUSHFIELD: This is for grants, RFPs</p> <p>22 for grants?</p> <p>23 MR. CARMAN: Yes.</p> <p>24 THE WITNESS: Do I know in the past has</p> <p>25 the District solicited RFPs on a --</p>

<p style="text-align: right;">Page 26</p> <p>1 Nicole Cherry</p> <p>2 BY MR. CARMAN:</p> <p>3 Q. Yes. So you said you weren't sure how the</p> <p>4 state distributed funds, whether that was done annually</p> <p>5 or on a quarterly basis. My question relates to how</p> <p>6 the District solicits RFPs, whether that was done on an</p> <p>7 annual basis or on a quarterly basis, specific for</p> <p>8 Empire State Grants?</p> <p>9 MR. RUSHFIELD: Objection to form.</p> <p>10 You can attempt to answer.</p>	<p style="text-align: right;">Page 27</p> <p>1 Nicole Cherry</p> <p>2 A. I do not.</p> <p>3 Q. Okay. You ever heard of an organization</p> <p>4 called the Black and Latino Coalition?</p> <p>5 A. Yes.</p> <p>6 Q. What is the Black and Latino Coalition?</p> <p>7 A. They provide STEM activities.</p> <p>8 Q. Are you finished with your answer?</p> <p>9 A. They have a program called Mighty Young</p> <p>10 Techs.</p>
<p>11 THE WITNESS: I do understand with</p> <p>12 Empire, once the RFP is accepted, it has to go through a</p> <p>13 process with OCFS, and once it's approved, unless a</p> <p>14 community-based organization backs out, they're pretty</p> <p>15 much in for the duration of the grant.</p> <p>16 BY MR. CARMAN:</p> <p>17 Q. And how long do these grants last?</p> <p>18 A. They could be three to five years.</p> <p>19 Q. Do you know how many organizations submitted</p> <p>20 proposals for the round one funding of Empire State</p> <p>21 Grants?</p> <p>22 A. I do not.</p> <p>23 Q. Okay. And do you know how many organizations</p> <p>24 received funding through the round one of Empire State</p> <p>25 Grants at Poughkeepsie City School District?</p>	<p>11 Q. And is that a program they run in</p> <p>12 Poughkeepsie City School District?</p> <p>13 MR. RUSHFIELD: Objection to form.</p> <p>14 THE WITNESS: Can you explain that?</p> <p>15 BY MR. CARMAN:</p> <p>16 Q. Sure. You said they have a program called</p> <p>17 Mighty Young Techs; right?</p> <p>18 A. Yes.</p> <p>19 Q. How are you aware of the Mighty Young Techs</p> <p>20 program?</p> <p>21 A. From my involvement on the city council.</p> <p>22 Q. And what is your involvement on the city</p> <p>23 council?</p> <p>24 A. I'm a council member, I'm also on a youth</p> <p>25 grant committee.</p>
<p style="text-align: right;">Page 28</p> <p>1 Nicole Cherry</p> <p>2 Q. Is the Mighty Young Techs program run at a</p> <p>3 Poughkeepsie City School District building?</p> <p>4 A. Yes, it was.</p> <p>5 MR. RUSHFIELD: I was objecting to form.</p> <p>6 You can answer it.</p> <p>7 THE WITNESS: Yes, it was run at a</p> <p>8 Poughkeepsie City School District building but I'm not</p> <p>9 sure if it is now.</p> <p>10 BY MR. CARMAN:</p> <p>11 Q. What building was it run at?</p> <p>12 A. It was ran in the summertime at Morris</p> <p>13 School.</p> <p>14 Q. Okay. Are you aware that Ms. Melton, the</p> <p>15 plaintiff in this case, is a director of the Black and</p> <p>16 Latino Coalition?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know whether the Black and Latino</p> <p>19 Coalition has ever applied for funding through an Empire</p> <p>20 State Grant?</p> <p>21 A. I found out from this process.</p> <p>22 Q. How did you find out?</p> <p>23 A. I was asked to be here today and I --</p> <p>24 Q. So --</p> <p>25 A. I'm sorry.</p>	<p style="text-align: right;">Page 29</p> <p>1 Nicole Cherry</p> <p>2 Q. Were you finished with your answer? I'll let</p> <p>3 you finish. Okay.</p> <p>4 A. Yeah.</p> <p>5 Q. So you -- prior to learning that you were</p> <p>6 going to be deposed, you were not aware that the Black</p> <p>7 and Latino Coalition had previously applied for funding</p> <p>8 through the Empire State Grant program; is that</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. When you learned that the Black and Latino</p> <p>12 Coalition had previously applied for Empire State</p> <p>13 Grants, did you do any sort of investigation to</p> <p>14 familiarize yourself with their proposal -- question --</p> <p>15 end of question?</p> <p>16 A. I'm sorry, I don't understand the question.</p> <p>17 Q. Sure. Do you have access to past proposals</p> <p>18 for Empire State Grants?</p> <p>19 A. I believe I can get access.</p> <p>20 Q. When you learned that the Black and Latino</p> <p>21 Coalition had previously applied for funding through the</p> <p>22 Empire State Grant program, did you seek access to their</p> <p>23 past proposals?</p> <p>24 A. No.</p> <p>25 Q. Did you speak to anyone about their past</p>

<p style="text-align: right;">Page 30</p> <p>Nicole Cherry</p> <p>proposals?</p> <p>A. No.</p> <p>Q. Do you have access to the scoring rubrics for past proposals for Empire State Grants?</p> <p>A. I believe I can gain access to past proposals.</p> <p>Q. Have you ever done so?</p> <p>A. No, sir.</p> <p>Q. Are you aware of any organizations that have</p>	<p style="text-align: right;">Page 31</p> <p>Nicole Cherry</p> <p>of requests for proposals?</p> <p>A. I can't answer that. I'm not sure.</p> <p>Q. You previously said that -- correct me if I'm wrong -- but I believe you previously testified that once an organization, a community-based organization is approved through OCFS that they are approved for the duration of the grant; is that right?</p> <p>A. Yes, as long as I -- can I expand on that?</p> <p>Q. Please.</p>
<p>applied for Empire State Grants funding at least two years in a row?</p> <p>MR. RUSHFIELD: Objection to form.</p> <p>THE WITNESS: I'm not sure of the question.</p> <p>BY MR. CARMAN:</p> <p>Q. When you say "you're not sure of the question," do you mean you don't understand the question or do you mean you're not sure what the answer is?</p> <p>A. Well, I'm not sure of the question because I know once the organization goes through the vetting process with OCFS, they're in for the duration of the grant. So I don't understand the question.</p> <p>Q. Okay. I'll try to clarify. For each round of Empire State Grant funding, is there only one round</p>	<p>A. As long as they're doing -- you know, their required paperwork and OCFS has no objection, yes.</p> <p>I hear a buzzing noise coming.</p> <p>Q. I hear that as well.</p> <p>Do you know of any organization that has requested Empire State Grant funding through more than one proposal?</p> <p>MR. RUSHFIELD: Object to form.</p> <p>If you can answer it, go ahead.</p> <p>THE WITNESS: I can't answer it.</p> <p>BY MR. CARMAN:</p> <p>Q. You can't answer it because you don't know?</p> <p>A. I don't know everyone that applied for the grant to answer that.</p> <p>Q. That's fair. If you don't know, you don't</p>
<p style="text-align: right;">Page 32</p> <p>Nicole Cherry</p> <p>know.</p> <p>If an organization receives funding through one proposal, does that increase the chance it will receive funding in a subsequent proposal?</p> <p>A. I don't believe that's the case. I believe each proposal is unique.</p> <p>Q. Do you know what percentage of organizations receive Empire State Grant funding the first time they apply for one?</p> <p>A. I don't know.</p> <p>Q. You testified earlier that the Black and Latino Coalition provided STEM programs; is that right?</p> <p>A. Yes.</p> <p>Q. And when you say "STEM" you mean science, technology, engineering, and math?</p> <p>A. Yes.</p> <p>Q. Do you know if there were any other organizations that applied for Empire State Grant funding that provided STEM programs?</p> <p>A. I don't know.</p> <p>Q. Are you aware of any organizations that have applied for Empire State Grants more than once and never received funding?</p>	<p style="text-align: right;">Page 33</p> <p>Nicole Cherry</p> <p>A. I don't know.</p> <p>Q. Okay. Do you know what percentage of organizations must apply multiple times before they receive Empire State Grant funding?</p> <p>A. I don't know.</p> <p>Q. Okay.</p> <p>MR. CARMAN: I don't have any further questions.</p> <p>MR. RUSHFIELD: I'm sorry?</p> <p>MR. CARMAN: I don't have any further questions.</p> <p>MR. RUSHFIELD: I'm going to ask a few, not very many.</p> <p style="text-align: center;">EXAMINATION</p> <p>BY MR. RUSHFIELD:</p> <p>Q. I just want to have a greater understanding of this blind process you mentioned, Ms. Cherry. When the applications -- after the RFP is issued and the applications are coming in, the proposals are coming in, you said that the identifying information is redacted. Who does that?</p> <p>A. The person that's listed as the mail-in on the RFP, so there's a designee on the RFP that RFPs are to be submitted to. Usually it's an assistant</p>

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superintendent or a chief financial officer.

Q. Okay. So -- and these redacted proposals, are they then transmitted to someone by this recipient?

A. When you say "transmitted"?

Q. After the redactions occur, where do these proposals then go?

A. They're prepared -- copies are made and they're prepared for committee. And a rubric is

created, a scoring rubric.

Q. And the committee, is that these administrators, maybe teachers, community members, three to five people, what you described earlier?

A. Yes.

Q. Okay. The question may be foolish and the answer may be self-explanatory but I'm going to ask it anyway. The committee that's using this rubric, are they then going to rank the applicants in order of approval or do they simply recommend one?

A. No, they score each individual applicant.

Q. And is that a number score or an alphabetical score?

A. A numeric score.

Q. And do you know what's the highest score,

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Q. This audit committee, do they actually meet when they do this process of scoring and ranking or do they simply each do it separately throughout the whole process?

A. With COVID it's -- this is a two-sided question, so I'll answer it both ways. So most recently I know that it was done remotely via Zoom, but they get together to debrief but --

Q. I'm sorry, go ahead.

A. In the past everyone was together but they were reading and scoring independently first.

Q. Okay. So now this -- I think you're telling me a sheet with the ranking goes to the person who gave the information -- gave the applications to the committee, so once this person receives them back, receives the rank sheet back, ranking back, where does it go next?

A. It goes to a superintendent.

Q. Okay. So when it goes to the superintendent -- this ranking, does it have the names of it -- does it now have the names of these applicants or is it still blind?

A. I left out one. So when the names are redacted, numbers are usually put on it, so you might be

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what's the lowest score, kind of numbers?

A. Off the top of my head I don't know, but I believe most of the time a base is a hundred.

Q. Hundred would be the best score?

A. Yes.

Q. Okay. The members of this committee, this three to five people, do they know who the applicants are?

A. No.

Q. When they're finished with this ranking through this rubric, what happens next? Where does this -- do they make a recommendation or do they simply provide certain information to another party? What's the next step?

A. Well, they each individually score. They read independently and they individually score the rubrics and then the scores are tallied up. They debrief at the end and the scores are tallied up and then the tallies of each proposals are submitted on a sheet.

Q. And that sheet is submitted to who?

A. The person who gave it to them, probably either the secretary that's attached to that assistant super or CFO, the person who gave the proposals to.

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number 15 or number 16.

Q. So if Black and Latino Coalition was one of the applicants they could be number 7 or number 5. They would be given a number rather than their names?

A. Correct.

Q. The sheet that has the ranking, is it still with numbers rather than names of entities?

A. Yes. The committee never knows who they scored on.

Q. Okay. The person who gets this information back from the committee, do they -- you said they send it to the superintendent of the schools. When they give it to the superintendent of the schools, is the superintendent of schools now given the identities of the applicants?

A. I believe so. I believe it's the responsibility of that clerical staff to match up the number and the applicant to present all the applicants to the superintendent that are being recommended.

Q. And what does the superintendent then do now that he has the ranking with the ability to know who each of the applicants is? What's the next step?

A. The next step is for him to make a resolution to the board to enter into for the District to enter

<p style="text-align: right;">Page 38</p> <p>1 Nicole Cherry</p> <p>2 into contract negotiations with these entities.</p> <p>3 Q. And so the board -- does the board then know</p> <p>4 the identity of the ranked entities?</p> <p>5 A. They don't know -- the board never knows the</p> <p>6 scoring, they just get resolution with the names of the</p> <p>7 entities that gives authorization for the District to</p> <p>8 enter into contract.</p> <p>9 Q. And the entities that the superintendent is</p> <p>10 giving information to the board for authorization for</p> <p>11 contract, with regard to, let's say, the Empire Grant,</p> <p>12 is this the entities who have been the highest ranked by</p> <p>13 the committee?</p> <p>14 A. Yes.</p> <p>15 Q. And when the board gets this information of</p> <p>16 these highest-ranked entities, is the board provided</p> <p>17 with the identity of the applicants who was these</p> <p>18 highest-ranked entities?</p> <p>19 A. I believe they're provided with the names of</p> <p>20 the organizations.</p> <p>21 Q. And that's for purposes of a resolution to be</p> <p>22 able to enter into negotiations to see if they are going</p> <p>23 to contract with them or not?</p> <p>24 A. Correct.</p> <p>25 Q. I got it. Okay.</p>	<p style="text-align: right;">Page 39</p> <p>1 Nicole Cherry</p> <p>2 This procedure that you've described,</p> <p>3 this methodology, do you have any reason to believe that</p> <p>4 hasn't been the methodology from the beginning of the</p> <p>5 Empire Grant process with the District to current times?</p> <p>6 Do you have any reason to believe it's changed?</p> <p>7 A. I don't because that's the way I was taught,</p> <p>8 so I don't assume I was taught anything new.</p> <p>9 Q. And you were taught that that's the process</p> <p>10 where and when?</p> <p>11 A. I was taught that was the process through</p> <p>12 Alaina who's the -- I want to get her title right. I</p> <p>13 don't know if she's administrative assistant or whom,</p> <p>14 what her proper title is, but -- and I've experienced</p> <p>15 that process personally because I've been involved</p> <p>16 recently in some RFPs that have gone out.</p> <p>17 Q. And what's Alaina's last name?</p> <p>18 A. Lozado.</p> <p>19 Q. Do you know how long Alaina Lozado has been</p> <p>20 in that position that you've described, whether it was</p> <p>21 administrative assistant for something else?</p> <p>22 A. Alaina has been in that position well over</p> <p>23 six or seven years now.</p> <p>24 Q. Thank you.</p> <p>25 With regard to these -- Counsel asked you</p>
<p style="text-align: right;">Page 40</p> <p>1 Nicole Cherry</p> <p>2 about whether you could gain access to these past</p> <p>3 proposals. I assume you're talking about Empire Grant</p> <p>4 proposals by applicants. Would the proposals that are</p> <p>5 in the possession of the District be the redacted ones</p> <p>6 or the unredacted ones or both?</p> <p>7 A. I can't answer that, but I'm sure they</p> <p>8 have -- they do have records. They are required to keep</p> <p>9 records.</p> <p>10 Q. If you're not sure, you're not sure. I</p> <p>11 assume I could probably find out. Okay.</p> <p>12 A. Our grants get audited often, so I do know</p> <p>13 that our records are looked at by independent auditors,</p> <p>14 so I'm sure they're compliant with any regulations.</p> <p>15 Q. The auditing of these grants, who does</p> <p>16 that?</p> <p>17 A. I don't know the person.</p> <p>18 Q. Is it somebody who's a district employee or</p> <p>19 is it someone from the outside?</p> <p>20 A. No, someone from the outside.</p> <p>21 Q. And do you know -- and if you don't, tell me.</p> <p>22 I don't want you to speculate or guess. Do you know</p> <p>23 what process that auditor uses in terms of auditing</p> <p>24 these grants, what they do?</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 41</p> <p>1 Nicole Cherry</p> <p>2 Q. The process -- it may be the same answer.</p> <p>3 The process that the District goes through with regard</p> <p>4 to what you refer to as this blind process, and the end</p> <p>5 result of the board eventually contracting with</p> <p>6 somebody, is that part of the audit process by this</p> <p>7 outside person?</p> <p>8 A. I don't know.</p> <p>9 Q. Okay. Fair enough. I have nothing further</p> <p>10 of this witness.</p> <p>11 MR. CARMAN: I have just one quick follow</p> <p>12 up.</p> <p>13 FURTHER EXAMINATION</p> <p>14 BY MR. CARMAN:</p> <p>15 Q. You mentioned just now that the names of the</p> <p>16 applicants will be unredacted when they go to the board;</p> <p>17 is that correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And that's so that the board can determine or</p> <p>20 enter into negotiations with an organization to</p> <p>21 determine whether they want to contract with them;</p> <p>22 right?</p> <p>23 A. No. The board doesn't enter into</p> <p>24 negotiations, the superintendent does, but the</p> <p>25 superintendent needs the board's approval.</p>

<div>Page 42</div> <div>Nicole Cherry</div> <div>Q. So the board tells the superintendent who to enter into negotiations with?</div> <div>A. I don't understand. Can you rephrase your question?</div> <div>Q. Sure. How does the superintendent know who to negotiate with?</div> <div>A. It goes to the board for approval and it's my understanding since they're the legislative branch, as long as the paperwork is in order, then the resolution gets approved. I don't --</div> <div>Q. When you -- sorry.</div> <div>A. I don't -- I don't believe they're involved with any sort of operation aspect.</div> <div>Q. So the board receives a ranked list, correct, of who -- of which proposals want funding?</div> <div>A. I'm not sure what happens in executive session, I just know publicly there's a resolution that's published that has the names of the proposed CBOs.</div> <div>Q. And that resolution is published before any funds are actually allocated; correct?</div> <div>A. That's published before any board action, period.</div> <div>Q. And then after that resolution the</div>																									<div>Page 43</div> <div>Nicole Cherry</div> <div>superintendent will enter into negotiations with those organizations; right?</div> <div>A. Correct.</div> <div>Q. And is part of that negotiation determining how much money each organization will receive?</div> <div>A. It could.</div> <div>Q. What do you mean "it could"?</div> <div>A. Because if there's things in a grant that may -- the superintendent may need more information on, he may ask that group, you know, to provide more information, or say the cost may be too high that they're asking for certain service, he may counter and suggest another number.</div> <div>Q. So is it fair to say that the amount of a grant that an organization will receive is a negotiating point between the superintendent and that organization?</div> <div>A. Yes. I mean, that's fair to say but it's not that simple because the parameters -- the superintendent goes by the parameters of the grant. Sometimes someone may put too much in a certain line that shouldn't go there. I don't know if you understand what I'm saying. So he may request it to fix that line or what have you, but he doesn't arbitrarily say, oh, this is too much for</div>																																																																																																				
<div>Page 44</div> <div>Nicole Cherry</div> <div>that. That's not what I was saying at all.</div> <div>Q. So the superintendent can only adjust the amount of funding if it's necessary to comply with the rules of the grant; is that right?</div> <div>A. Correct.</div> <div>Q. Okay. And that's the current process; correct?</div> <div>A. Yes.</div> <div>Q. And I believe you said you have no reason to believe that the current process is different than the past process; right?</div> <div>A. Yes.</div> <div>Q. Okay. I have nothing further.</div> <div>MR. RUSHFIELD: Nor do I.</div> <div>Thank you, Ms. Cherry. I believe you're excused.</div> <div>THE REPORTER: Mr. Rushfield, do you need to order a copy of the transcript?</div> <div>MR. RUSHFIELD: Yes.</div> <div>(Off record at 9:36 a.m.)</div>																									<div>Page 45</div> <div>WITNESS ERRATA SHEET</div> <div>WITNESS NAME: NICOLE CHERRY DATE: JUNE 29, 2021</div> <div>CASE NAME: CAROL MELTON v. POUGHKEEPSIE CITY SCHOOL DISTRICT</div> <div>Reason Codes: (1) to clarify the record; (2) to conform to the facts; (3) to correct a transcription error; (4) other (please explain.)</div> <table><thead><tr><th>PAGE</th><th>LINE</th><th>CHANGE</th><th>REASON CODE</th></tr></thead><tbody><tr><td>8</td><td></td><td></td><td></td></tr><tr><td>9</td><td></td><td></td><td></td></tr><tr><td>10</td><td></td><td></td><td></td></tr><tr><td>11</td><td></td><td></td><td></td></tr><tr><td>12</td><td></td><td></td><td></td></tr><tr><td>13</td><td></td><td></td><td></td></tr><tr><td>14</td><td></td><td></td><td></td></tr><tr><td>15</td><td></td><td></td><td></td></tr><tr><td>16</td><td></td><td></td><td></td></tr><tr><td>17</td><td></td><td></td><td></td></tr><tr><td>18</td><td></td><td></td><td></td></tr><tr><td>19</td><td></td><td></td><td></td></tr><tr><td>20</td><td></td><td></td><td></td></tr><tr><td>21</td><td></td><td></td><td></td></tr><tr><td>22</td><td></td><td></td><td></td></tr><tr><td>23</td><td></td><td></td><td></td></tr><tr><td>24</td><td></td><td></td><td></td></tr><tr><td>25</td><td></td><td></td><td></td></tr></tbody></table>																									PAGE	LINE	CHANGE	REASON CODE	8				9				10				11				12				13				14				15				16				17				18				19				20				21				22				23				24				25			
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I, NICOLE CHERRY, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

NICOLE CHERRY

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared NICOLE CHERRY, known to me (or proved to me under oath or through _____) [description of identity card or other document] to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES: _____

I, CHERYL A. DIXON, Registered Professional Reporter, Certified Realtime Reporter and Notary Public, do hereby declare:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn pursuant to Section 30(f)(1) of the Federal Rules of Civil Procedure and the deposition is a true record of the testimony given by the witness.

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to text under my direction.

That the witness was requested to review the transcript and make any changes to the transcript as a result of that review pursuant to Section 30(e) of the Federal Rules of Civil Procedure.

Signature is waived.

The changes made by the witness are appended to the transcript.

 X No request was made that the transcript be reviewed pursuant to Section 30(e) of the Federal Rules of Civil Procedure.

I further declare that I have no interest in the event or the action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Witness my hand this 23rd day of August, 2021.

Cheryl Dixon

CHERYL A. DIXON

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